

General Assembly

Amendment

January Session, 2015

LCO No. 7336



Offered by:

SEN. KELLY, 21st Dist.

To: Subst. Senate Bill No. 896

File No. 294

Cal. No. 223

"AN ACT CONCERNING PROTECTIVE SERVICES FOR SUSPECTED ELDERLY ABUSE VICTIMS."

- 1 Strike everything after the enacting clause and substitute the
- 2 following in lieu thereof:
- 3 "Section 1. Section 17b-450 of the general statutes is repealed and the
- 4 following is substituted in lieu thereof (*Effective July 1, 2015*):
- 5 For purposes of sections 17b-450 to 17b-461, inclusive, and section 9
- 6 of this act:
- 7 [(1) The term "elderly person" means any resident of Connecticut
- 8 who is sixty years of age or older.
- 9 (2) An elderly person shall be deemed to be "in need of protective
- services" if such person is unable to perform or obtain services which
- 11 are necessary to maintain physical and mental health.
- 12 (3) The term "services which are necessary to maintain physical and

13 mental health" includes, but is not limited to, the provision of medical 14 care for physical and mental health needs, the relocation of an elderly 15 person to a facility or institution able to offer such care, assistance in 16 personal hygiene, food, clothing, adequately heated and ventilated 17 shelter, protection from health and safety hazards, protection from 18 maltreatment the result of which includes, but is not limited to, 19 malnutrition, deprivation of necessities or physical punishment, and 20 transportation necessary to secure any of the above stated needs, 21 except that this term shall not include taking such person into custody 22 without consent except as provided in sections 17b-450 to 17b-461, 23 inclusive.

- (4) The term "protective services" means services provided by the state or other governmental or private organizations or individuals which are necessary to prevent abuse, neglect, exploitation or abandonment. Abuse includes, but is not limited to, the wilful infliction of physical pain, injury or mental anguish, or the wilful deprivation by a caretaker of services which are necessary to maintain physical and mental health. Neglect refers to an elderly person who is either living alone and not able to provide for himself or herself the services which are necessary to maintain physical and mental health or is not receiving such necessary services from the responsible caretaker. Exploitation refers to the act or process of taking advantage of an elderly person by another person or caretaker whether for monetary, personal or other benefit, gain or profit. Abandonment refers to the desertion or wilful forsaking of an elderly person by a caretaker or the foregoing of duties or the withdrawal or neglect of duties and obligations owed an elderly person by a caretaker or other person.
- (5) The term "caretaker" means a person who has the responsibility for the care of an elderly person as a result of family relationship or who has assumed the responsibility for the care of the elderly voluntarily, by contract or by order of a court of competent jurisdiction.]
- 45 (1) "Abuse" includes, but is not limited to, the wilful infliction of

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physical pain, injury or mental anguish, or the wilful deprivation of services that are necessary to maintain physical and mental health;

- 48 (2) "Abandonment" means the desertion of an elderly person or the
- 49 foregoing of duties or the withdrawal or neglect of duties and
- 50 <u>obligations owed an elderly person or other person;</u>
- 51 (3) "Caregiver" means a person who cares for an elderly person
- 52 voluntarily, by contract or by order of a court of competent
- 53 <u>jurisdiction</u>;
- 54 (4) "Commissioner" means the Commissioner of Social Services or
- 55 any other person designated by the commissioner to work on
- 56 protective services matters;
- 57 (5) "Elderly person" means a person who is sixty-five years of age or
- 58 <u>older;</u>
- 59 (6) "Exploitation" means the act or process of taking advantage of an
- 60 elderly person whether for monetary, personal or other benefit, gain or
- 61 profit;
- 62 (7) "In need of protective services" means that the elderly person is
- 63 <u>unable to perform or obtain services that are necessary to maintain</u>
- 64 physical and mental health;
- 65 (8) "Neglect" means the inability of an elderly person to provide for
- 66 <u>himself or herself the services that are necessary to maintain physical</u>
- 67 and mental health or the unwillingness or inability of a caregiver to
- 68 provide such necessary services to an elderly person;
- 69 (9) "Legal representative" means a guardian ad litem, conservator or
- 70 power of attorney appointed to act on the elderly person's behalf;
- 71 (10) "Protective services" means services provided by the state, other
- 72 governmental or private organizations or individuals that are
- 73 necessary to prevent abuse, neglect, exploitation or abandonment;

(11) "Services that are necessary to maintain physical and mental health" include, but are not limited to, (A) the provision of medical care to an elderly person in order to meet such person's physical and mental health needs, (B) the relocation of an elderly person to a facility or institution able to offer such care, (C) assistance in personal hygiene, (D) food, clothing, adequately heated and ventilated shelter, (E) protection from health and safety hazards, (F) protection from maltreatment the result of which includes, but is not limited to, malnutrition, deprivation of necessities or physical punishment, and (G) transportation necessary to secure such physical and mental health needs. "Services that are necessary to maintain physical and mental health" do not include taking such person into custody without consent except as provided in this section and sections 17b-451 to 17b-461, inclusive.

- Sec. 2. Section 17b-452 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2015*):
 - (a) The commissioner upon receiving a report that an elderly person allegedly is being, or has been, abused, neglected, exploited or abandoned, or is in need of protective services shall investigate the report to determine [the situation relative to] the condition of the elderly person and what action and services, if any, are required. The investigation shall include (1) [a] an in-person visit to the named elderly person, (2) consultation with those individuals having knowledge of the facts of the particular case, and (3) an interview with the elderly person alone unless (A) the elderly person refuses to consent to such interview, [(B) a physician, having examined the elderly person not more than thirty days prior to or after the date on which the commissioner receives such report, provides a written letter stating that in the opinion of the physician an interview with the elderly person alone is medically contraindicated, or (C)] or (B) the commissioner determines that such interview is not in the best interests of the elderly person. If the commissioner determines that a [caretaker] <u>caregiver</u> is interfering with the commissioner's ability to

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conduct an interview alone with the elderly person, the commissioner may bring an action in the Superior Court [or Probate Court] seeking an order enjoining such [caretaker] caregiver from interfering with the commissioner's ability to conduct an interview alone with the elderly person. In investigating a report under this subsection, the commissioner may subpoena witnesses, take testimony under oath and compel the production of any necessary and relevant documents necessary to investigate the allegations of abuse, neglect, exploitation or abandonment. The commissioner may request the Attorney General to petition the Superior Court for such order as may be appropriate to enforce the provisions of this section. Upon completion of the investigation, [written findings shall be prepared which] the commissioner shall prepare written findings that shall include recommended action and a determination of whether protective services are needed. [The person filing the report shall be notified of the findings, upon request.]

- (b) The Department of Social Services shall maintain a state-wide registry of the <u>number of</u> reports received, the [investigation] allegations and [findings and the actions taken] the outcomes.
- 126 (c) The [client's file] elderly person's file, including, but not limited 127 to, the original report and the investigation report shall not be deemed 128 a public [records] record nor be subject to the provisions of section 1-129 210. [The name of the person making the original report or any person 130 mentioned in such report shall not be disclosed unless the person making the original report specifically requests such disclosure or 132 unless a judicial proceeding results therefrom or unless disclosure of 133 the name of the elderly person about whom the report was made is 134 required to fully investigate a report.] The commissioner may disclose 135 the elderly person's file, in whole or in part, to an individual, agency, 136 corporation or organization only with the written authorization of the 137 elderly person, the elderly person's legal representative or as provided by this section.
- 139 (d) Notwithstanding the provisions of subsection (c) of this section,

if there is clear and convincing evidence it is necessary to assure the 140 141 health, safety and welfare of an elderly person, the commissioner may disclose the elderly person's records, whether or not created by the 142 department, and not otherwise privileged or confidential 143 144 communications under state or federal law, without the authorization of the elderly person or the elderly person's legal representative (1) to 145 146 multidisciplinary teams that may be formed to assist the department in investigation, evaluation or treatment of elderly abuse and neglect 147 cases; (2) to law enforcement officials; and (3) in proceedings 148 authorized under this chapter or in any action the commissioner 149 150 determines there is clear and convincing evidence disclosure is necessary to assure the health, safety and welfare of any elderly 151 152 person.

(e) Notwithstanding the provisions of subsections (c) and (d) of this section, the commissioner shall not disclose the name of a person who reported suspected abuse, neglect, exploitation, abandonment of an elderly person except with that person's written permission, or to a law enforcement official pursuant to a court order that specifically requires such disclosure or to the elderly person who is the subject of the report upon such elderly person's request.

(f) The elderly person or his or her legal representative or attorney shall have the right of access to records made, maintained or kept on file by the department, in accordance with all applicable state and federal law, when those records pertain to or contain information or material concerning the elderly person, including, but not limited to, records concerning investigations, reports or medical, psychological or psychiatric examinations of the elderly person except: (1) If it is determined by a licensed health care professional that the access requested is reasonably likely to endanger the life or physical safety of the elderly person or another person involved in the investigation; or (2) if the protected health information makes reference to another person, other than a health care provider, and a licensed health care professional has determined, in the exercise of professional judgment,

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that the access requested is reasonably likely to cause substantial harmto such other person.

- Sec. 3. Section 17b-453 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2015*):
- 177 (a) If it is determined that an elderly person is in need of protective 178 services, services shall be initiated, provided the elderly person 179 consents. If the elderly person fails to consent and the [protective 180 services staff of the Department of Social Services] commissioner has 181 reason to believe that such elderly person is incapable of managing his 182 or her personal or financial affairs, the [protective services staff] 183 commissioner shall provide protective services to the extent possible 184 and may apply to Probate Court for the appointment of a conservator 185 of person or estate, as appropriate.
 - (b) If the [caretaker] <u>caregiver</u> of an elderly person who has consented to the receipt of reasonable and necessary protective services refuses to allow the provision of such services to such elderly person, the [Commissioner of Social Services] <u>commissioner</u> may petition the Superior Court [or the Probate Court] for an order enjoining the [caretaker] <u>caregiver</u> from interfering with the provision of protective services to the elderly person. The petition shall allege specific facts sufficient to show that the elderly person is in need of protective services and consents to their provision and that the [caretaker] <u>caregiver</u> refuses to allow the provision of such services. If the judge finds that the elderly person is in need of such services and has been prevented by the [caretaker] <u>caregiver</u> from receiving the same, the judge may issue an order enjoining the [caretaker] <u>caregiver</u> from interfering with the provision of protective services to the elderly person.
- Sec. 4. Section 17b-454 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2015*):
- 203 [Any person, department, agency or commission authorized to

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204 carry out the duties enumerated in sections 17b-450 to 17b-461, 205 inclusive, shall have access to all relevant records, except that records 206 which are confidential to an elderly person shall only be divulged with the written consent of the elderly person or the representative of such 207 208 elderly person.] A covered entity, as defined in 45 CFR 160.103, shall 209 disclose to the commissioner all relevant protected health information 210 and other information about an elderly person that is necessary for the 211 commissioner to investigate an allegation of abuse, neglect, 212 exploitation or abandonment, provided the covered entity shall 213 provide notice to such elderly person in accordance with subsection (c) 214 of 45 CFR 164.512. If the [Commissioner of Social Services] 215 commissioner has reasonable cause to believe that the elderly person 216 llacks capacity to give consent to release confidential records or if the caretaker of such elderly person is refusing consent and the 217 218 commissioner has reasonable cause to believe that such caretaker has 219 is being abused, neglected, exploited or abandoned, [the elderly 220 person, the commissioner may issue a subpoena to obtain 221 [confidential records] protected health information or other 222 information necessary to investigate the allegations of abuse, neglect, 223 exploitation or abandonment. The commissioner may request the 224 Attorney General to petition the Superior Court for such order as may 225 be appropriate to enforce the provisions of this section. The commissioner's authority [of the Department of Social Services] shall 226 227 include, but shall not be limited to, the right to initiate or otherwise 228 take those actions necessary to assure the health, safety and welfare of 229 any elderly person. [, subject to any specific requirement for individual 230 consent, and the right to authorize the transfer of an elderly person 231 from a nursing home.]

Sec. 5. Section 17b-455 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2015*):

If an elderly person does not consent to the receipt of reasonable and necessary protective services, or if such person withdraws the consent, such services shall not be provided or continued, except that if

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237 the [Commissioner of Social Services] commissioner has reason to

- 238 believe that such elderly person lacks capacity to consent, [he] the
- 239 <u>commissioner</u> may seek court authorization to provide necessary
- services, as provided in section 17b-456, as amended by this act.
- Sec. 6. Section 17b-456 of the general statutes is repealed and the
- following is substituted in lieu thereof (*Effective July 1, 2015*):
- 243 (a) If the Commissioner of Social Services finds that an elderly
- 244 person is being abused, neglected, exploited or abandoned and lacks
- 245 capacity to consent to reasonable and necessary protective services,
- [he] the commissioner may petition the Probate Court for appointment
- of a conservator of the elderly person pursuant to the provisions of
- sections 45a-644 to 45a-662, inclusive, in order to obtain such consent.
- 249 (b) Such elderly person or the individual, agency or organization
- designated to be responsible for the personal welfare of the elderly
- 251 person shall have the right to bring a motion in the cause for review of
- 252 the Probate Court's determination regarding the elderly person's
- 253 capacity or an order issued pursuant to sections 17b-450 to 17b-461,
- 254 inclusive, as amended by this act.
- (c) The Probate Court may appoint [, if it deems appropriate,] the
- 256 Commissioner of Social Services to be the conservator of the person of
- such elderly person pursuant to the provisions of section 45a-651.
- 258 (d) In any proceeding in Probate Court pursuant to <u>the</u> provisions of
- sections 17b-450 to 17b-461, inclusive, as amended by this act, the
- 260 Probate Court shall appoint an attorney to represent the elderly person
- if he <u>or she</u> is without other legal representation.
- Sec. 7. Section 17b-459 of the general statutes is repealed and the
- following is substituted in lieu thereof (*Effective July 1, 2015*):
- 264 Concurrent with the implementation of any protective services, an
- 265 evaluation shall be undertaken by the Department of Social Services,
- 266 pursuant to regulations [which] that shall be adopted by the

Commissioner of Social Services, in accordance with chapter 54, regarding the elderly person's financial capability for paying for the protective services. If the <u>elderly</u> person is so able, procedures for the reimbursement for the costs of providing the needed protective services shall be initiated. If it is determined that the <u>elderly</u> person is not financially capable of paying for such needed services, the services shall be provided in accordance with policies and procedures established by the Commissioner of Social Services for the provision of welfare benefits under such circumstances.

- Sec. 8. Section 17b-460 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2015*):
- If, as a result of any investigation initiated under the provisions of sections 17b-450 to 17b-461, inclusive, as amended by this act, a determination is made that a [caretaker] <u>caregiver</u> or other person has abused, neglected, exploited or abandoned an elderly person, such information shall be referred in writing to the Chief State's Attorney or the Chief State's Attorney's designee who shall conduct such further investigation, if any, as deemed necessary and shall determine whether criminal proceedings should be initiated against such [caretaker] <u>caregiver</u> or other person, in accordance with applicable state law.
- Sec. 9. (NEW) (*Effective July 1, 2015*) (a) The Commissioner of Social Services may apply to the Superior Court for an order to enter the premises of an elderly person for purposes of an assessment when there is clear and convincing evidence that the elderly person may be in need of protective services and is refused access by the elderly person or another individual.
- (b) The commissioner shall document in the Department of Social Service's investigation file the factors considered when making the decision about whether to apply for an order to enter the premises.
- 297 (c) The commissioner shall state in the application for an order to

enter the premises that the order is being sought solely for the purpose of assessing whether the elderly person is in need of protective services and shall include, to the extent the facts can be ascertained with reasonable diligence, the following information:

- (1) The name and address of the elderly person who may be in need of protective services and the premises on which this person may be found, if different;
- 305 (2) The reason for the belief that the elderly person may be in need 306 of protective services, which may include information provided by 307 other agencies or individuals who are familiar with the elderly person;
- 308 (3) The name and address, if known, of the individual or individuals 309 who are responsible for preventing access to the elderly person;
- 310 (4) Previous efforts that have been made to enter the premises of the 311 elderly person who may need protective services;
 - (5) The names of any individuals, such as the department's social worker, and any other health or mental health professionals, who may participate in the assessment of whether the elderly person needs protective services;
- 316 (6) The manner by which the assessment will be conducted; and
- (7) Whether there has been a prior application to the Superior Court to enter the premises of the elderly person, or for any similar relief, and, if so, the determination of such application, and new facts, if any, that were not in the previous application, which support submission of another application.
 - (d) Any allegations of abuse, neglect, exploitation or abandonment that are not based on the commissioner's personal knowledge shall be based on the personal knowledge of the person reporting the abuse, neglect, exploitation or abandonment or the personal knowledge of any other person who has information relating to the report. Whenever

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327 possible, the allegations that are not based on the commissioner's

- 328 knowledge shall be supported by an affidavit, under penalty of
- 329 perjury, of the person having such knowledge and shall be attached to
- 330 the application.
- 331 (e) The applications authorized in this section shall take precedence 332 over all other causes in the Probate Court, except for other causes that 333 may take precedence as provided in the general statutes.
- 334 (f) If the Probate Court is satisfied that (1) there is clear and 335 convincing evidence that an elderly person in need of protective 336 services may be found at the premises described in the application, (2) 337 such person may be in need of protective services, and (3) access to 338 such person has been refused, it shall grant the application and issue 339 an order authorizing the commissioner, accompanied by a police 340 officer and any other person the commissioner determines necessary, 341 to enter the premises to conduct an assessment to determine whether 342 the elderly person named in the application is in need of protective 343 services.
 - (g) The provisions of this section shall not be construed to authorize the commissioner to remove any person from the premises described in the application, or to provide any involuntary protective services to any person, other than to assess an elderly person's need for protective services. Nothing in this section shall be construed to impair any existing right or remedy under law for any person subject to the provisions of this section.
 - Sec. 10. (NEW) (*Effective October 1, 2015*) (a) Each state agency shall recognize, apply and enforce any order, denial or decree of a Probate Court that is applicable to any determination made by the state agency in a contested case. Any state agency aggrieved by an order, denial or decree of a Probate Court that is applicable to such a determination may appeal therefrom to the Superior Court in accordance with section 45a-186 of the general statutes, as amended by this act.

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358 (b) For the purposes of this section, "state agency" means an agency, 359 as defined in section 4-166 of the general statutes, and "contested case" 360 means a contested case, as defined in section 4-166 of the general 361 statutes.

- Sec. 11. Section 45a-186 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):
- 364 (a) Except as provided in sections 45a-187 and 45a-188, any person 365 aggrieved by any order, denial or decree of a Probate Court in any 366 matter, unless otherwise specially provided by law, may, not later than 367 forty-five days after the mailing of an order, denial or decree for a 368 matter heard under any provision of section 45a-593, 45a-594, 45a-595 369 or 45a-597, sections 45a-644 to 45a-677, inclusive, or sections 45a-690 to 370 45a-705, inclusive, and not later than thirty days after mailing of an 371 order, denial or decree for any other matter in a Probate Court, appeal 372 therefrom to the Superior Court. Such an appeal shall be commenced 373 by filing a complaint in the superior court in the judicial district in 374 which such Probate Court is located, or, if the Probate Court is located 375 in a probate district that is in more than one judicial district, by filing a 376 complaint in a superior court that is located in a judicial district in 377 which any portion of the probate district is located, except that (1) an 378 appeal under subsection (b) of section 12-359, subsection (b) of section 379 12-367, [or] subsection (b) of section 12-395 or section 10 of this act 380 shall be filed in the judicial district of Hartford, and (2) an appeal in a 381 matter concerning removal of a parent as guardian, termination of 382 parental rights or adoption shall be filed in any superior court for 383 juvenile matters having jurisdiction over matters arising in any town 384 within such probate district. The complaint shall state the reasons for 385 the appeal. A copy of the order, denial or decree appealed from shall 386 be attached to the complaint. Appeals from any decision rendered in 387 any case after a recording is made of the proceedings under section 388 17a-498, 17a-543, 17a-543a or 17a-685, sections 45a-644 to 45a-667v, 389 inclusive, or section 51-72 or 51-73 shall be on the record and shall not 390 be a trial de novo.

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(b) Each person who files an appeal pursuant to this section shall serve a copy of the complaint on each interested party. The failure of any person to make such service shall not deprive the Superior Court of jurisdiction over the appeal. Notwithstanding the provisions of section 52-50, service of the copy of the complaint shall be by state marshal, constable or an indifferent person. Service shall be in hand or by leaving a copy at the place of residence of the interested party being served or at the address for the interested party on file with the Probate Court, except that service on a respondent or conserved person in an appeal from an action under part IV of chapter 802h shall be in hand by a state marshal, constable or an indifferent person.

- (c) In addition to the notice given under subsection (b) of this section, each person who files an appeal pursuant to this section shall mail a copy of the complaint to the Probate Court that rendered the order, denial or decree appealed from. The Probate Court and the judge of probate that rendered the order, denial or decree appealed from shall not be made parties to the appeal and shall not be named in the complaint as parties.
- (d) Not later than fifteen days after a person files an appeal under this section, the person who filed the appeal shall file or cause to be filed with the clerk of the Superior Court a document containing (1) the name, address and signature of the person making service, and (2) a statement of the date and manner in which a copy of the complaint was served on each interested party and mailed to the Probate Court that rendered the order, denial or decree appealed from.
- (e) If service has not been made on an interested party, the Superior Court, on motion, shall make such orders of notice of the appeal as are reasonably calculated to notify any necessary party not yet served.
- (f) A hearing in an appeal from probate proceedings under section 17a-77, 17a-80, 17a-498, 17a-510, 17a-511, 17a-543, 17a-543a, 17a-685, 45a-650, 45a-654, 45a-660, 45a-674, 45a-676, 45a-681, 45a-682, 45a-699, 45a-703, [or] 45a-717 or section 10 of this act shall commence, unless a

stay has been issued pursuant to subsection (g) of this section, not later than ninety days after the appeal has been filed.

- (g) The filing of an appeal under this section shall not, of itself, stay enforcement of the order, denial or decree from which the appeal is taken. A motion for a stay may be made to the Probate Court or the Superior Court. The filing of a motion with the Probate Court shall not preclude action by the Superior Court.
- (h) Nothing in this section shall prevent any person aggrieved by any order, denial or decree of a Probate Court in any matter, unless otherwise specially provided by law, from filing a petition for a writ of habeas corpus, a petition for termination of involuntary representation or a petition for any other available remedy.
- (i) (1) Except for matters described in subdivision (3) of this subsection, in any appeal filed under this section, the appeal may be referred by the Superior Court to a special assignment probate judge appointed in accordance with section 45a-79b, who is assigned by the Probate Court Administrator for the purposes of such appeal, except that such appeal shall be heard by the Superior Court if any party files a demand for such hearing in writing with the Superior Court not later than twenty days after service of the appeal.
- (2) An appeal referred to a special assignment probate judge pursuant to this subsection shall proceed in accordance with the rules for references set forth in the rules of the judges of the Superior Court.
- 446 (3) The following matters shall not be referred to a special 447 assignment probate judge pursuant to this subsection: Appeals under 448 sections 17a-75 to 17a-83, inclusive, section 17a-274, sections 17a-495 to 449 17a-528, inclusive, sections 17a-543, 17a-543a, 17a-685 to 17a-688, 450 inclusive, and section 10 of this act, children's matters as defined in 451 subsection (a) of section 45a-8a, sections 45a-644 to 45a-663, inclusive, 452 45a-668 to 45a-684, inclusive, and 45a-690 to 45a-700, inclusive, and any matter in a Probate Court heard on the record in accordance with 453

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454 sections 51-72 and 51-73."

This act shall take effect as follows and shall amend the following sections:		
sections.		
Section 1	July 1, 2015	17b-450
Sec. 2	July 1, 2015	17b-452
Sec. 3	July 1, 2015	17b-453
Sec. 4	July 1, 2015	17b-454
Sec. 5	July 1, 2015	17b-455
Sec. 6	July 1, 2015	17b-456
Sec. 7	July 1, 2015	17b-459
Sec. 8	July 1, 2015	17b-460
Sec. 9	July 1, 2015	New section
Sec. 10	October 1, 2015	New section
Sec. 11	October 1, 2015	45a-186